

HOUSE BILL No. 2207

By Committee on Judiciary

2-8

1 AN ACT concerning limited liabilities companies; relating to series
2 limited liability companies; amending K.S.A. 17-7663 and 17-7682
3 and repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) An operating agreement may establish or
7 provide for the establishment of one or more designated series of
8 members, managers, limited liability company interests or assets. Any
9 such series may have separate rights, powers or duties with respect to
10 specified property or obligations of the limited liability company or
11 profits and losses associated with specified property or obligations, and
12 any such series may have a separate business purpose or investment
13 objective.

14 (b) Notwithstanding anything to the contrary set forth in article 76 of
15 chapter 17 of the Kansas Statutes Annotated, and amendments thereto, or
16 under other applicable law, in the event that an operating agreement
17 establishes or provides for the establishment of one or more series, and if
18 the records maintained for any such series account for the assets
19 associated with such series separately from the other assets of the limited
20 liability company, or any other series thereof, and if the operating
21 agreement so provides, and if notice of the limitation on liabilities of a
22 series as referenced in this subsection is set forth in the articles of
23 organization of the limited liability company, then the debts, liabilities,
24 obligations and expenses incurred, contracted for or otherwise existing
25 with respect to a particular series shall be enforceable against the assets of
26 such series only, and not against the assets of the limited liability
27 company generally or any other series thereof, and, unless otherwise
28 provided in the operating agreement, none of the debts, liabilities,
29 obligations and expenses incurred, contracted for or otherwise existing
30 with respect to the limited liability company generally or any other series
31 thereof shall be enforceable against the assets of such series. Assets
32 associated with a series may be held directly or indirectly, including in
33 the name of such series, in the name of the limited liability company,
34 through a nominee or otherwise. Records maintained for a series that
35 reasonably identify its assets, including by specific listing, category, type,
36 quantity, computational or allocational formula or procedure, including a

1 percentage or share of any asset or assets, or by any other method where
2 the identity of such assets is objectively determinable, will be deemed to
3 account for the assets associated with such series separately from the
4 other assets of the limited liability company, or any other series thereof.
5 Notice in the articles of organization of the limitation on liabilities of a
6 series as referenced in this subsection shall be sufficient for all purposes
7 of this subsection whether or not the limited liability company has
8 established any series when such notice is included in the articles of
9 organization, and there shall be no requirement that any specific series of
10 the limited liability company be referenced in such notice. The fact that
11 the articles of organization that contains the foregoing notice of the
12 limitation on liabilities of a series is on file in the office of the secretary
13 of state shall constitute notice of such limitation on liabilities of a series.

14 (c) Unless otherwise provided in the operating agreement, a series
15 established in accordance with subsection (b) shall have the power and
16 capacity to, in its own name, contract, hold title to assets, including real,
17 personal and intangible property, grant liens and security interests, and
18 sue and be sued.

19 (d) Notwithstanding K.S.A. 17-7688, and amendments thereto,
20 under the operating agreement or under another agreement, a member or
21 manager may agree to be obligated personally for any or all of the debts,
22 obligations and liabilities of one or more series.

23 (e) An operating agreement may provide for classes or groups of
24 members or managers associated with a series having such relative rights,
25 powers and duties as the operating agreement may provide, and may
26 make provision for the future creation in the manner provided in the
27 operating agreement of additional classes or groups of members or
28 managers associated with the series having such relative rights, powers
29 and duties as may from time to time be established, including rights,
30 powers and duties senior to existing classes and groups of members or
31 managers associated with the series. An operating agreement may provide
32 for the taking of an action, including the amendment of the operating
33 agreement, without the vote or approval of any member or manager or
34 class or group of members or managers, including an action to create
35 under the provisions of the operating agreement a class or group of the
36 series of limited liability company interests that was not previously
37 outstanding. An operating agreement may provide that any member or
38 class or group of members associated with a series shall have no voting
39 rights.

40 (f) An operating agreement may grant to all or certain identified
41 members or managers or a specified class or group of the members or
42 managers associated with a series the right to vote separately or with all
43 or any class or group of the members or managers associated with the

1 series, on any matter. Voting by members or managers associated with a
2 series may be on a per capita, number, financial interest, class, group or
3 any other basis.

4 (g) Unless otherwise provided in an operating agreement, the
5 management of a series shall be vested in the members associated with
6 such series in proportion to the then current percentage or other interest
7 of members in the profits of the series owned by all of the members
8 associated with such series, the decision of members owning more than
9 50% of the said percentage or other interest in the profits controlling;
10 provided, however, that if an operating agreement provides for the
11 management of the series, in whole or in part, by a manager, the
12 management of the series, to the extent so provided, shall be vested in the
13 manager who shall be chosen in the manner provided in the operating
14 agreement. The manager of the series shall also hold the offices and have
15 the responsibilities accorded to the manager as set forth in the operating
16 agreement. A series may have more than one manager. Subject to K.S.A.
17 17-76,105, and amendments thereto, a manager shall cease to be a
18 manager with respect to a series as provided in the operating agreement.
19 Except as otherwise provided in the operating agreement, any event under
20 article 76 of chapter 17 of the Kansas Statutes Annotated, and
21 amendments thereto, or in the operating agreement that causes a manager
22 to cease to be a manager with respect to a series shall not, in itself, cause
23 such manager to cease to be a manager of the limited liability company or
24 with respect to any other series thereof.

25 (h) Notwithstanding K.S.A. 17-76,109, and amendments thereto, but
26 subject to subsections (i) and (l), and unless otherwise provided in an
27 operating agreement, at the time a member associated with a series that
28 has been established in accordance with subsection (b) becomes entitled
29 to receive a distribution with respect to such series, the member has the
30 status of, and is entitled to all remedies available to, a creditor of the
31 series, with respect to the distribution. An operating agreement may
32 provide for the establishment of a record date with respect to allocations
33 and distributions with respect to a series.

34 (i) Notwithstanding subsection (a) of K.S.A. 17-76,110, and
35 amendments thereto, a limited liability company may make a distribution
36 with respect to a series that has been established in accordance with
37 subsection (b). A limited liability company shall not make a distribution
38 with respect to a series that has been established in accordance with
39 subsection (b) to a member to the extent that at the time of the
40 distribution, after giving effect to the distribution, all liabilities of such
41 series, other than liabilities to members on account of their limited
42 liability company interests with respect to such series and liabilities for
43 which the recourse of creditors is limited to specified property of such

1 series, exceed the fair value of the assets associated with such series,
2 except that the fair value of property of the series that is subject to a
3 liability for which the recourse of creditors is limited shall be included in
4 the assets associated with such series only to the extent that the fair value
5 of that property exceeds that liability. For purposes of the immediately
6 preceding sentence, the term “distribution” shall not include amounts
7 constituting reasonable compensation for present or past services or
8 reasonable payments made in the ordinary course of business pursuant to
9 a bona fide retirement plan or other benefits program. A member who
10 receives a distribution in violation of this subsection, and who knew at
11 the time of the distribution that the distribution violated this subsection,
12 shall be liable to a series for the amount of the distribution. A member
13 who receives a distribution in violation of this subsection, and who did
14 not know at the time of the distribution that the distribution violated this
15 subsection, shall not be liable for the amount of the distribution. Subject
16 to subsection (c) of K.S.A. 17-76,110, and amendments thereto, which
17 shall apply to any distribution made with respect to a series under this
18 subsection, this subsection shall not affect any obligation or liability of a
19 member under an agreement or other applicable law for the amount of a
20 distribution.

21 (j) Unless otherwise provided in the operating agreement, a member
22 shall cease to be associated with a series and to have the power to
23 exercise any rights or powers of a member with respect to such series
24 upon the assignment of all of the member's limited liability company
25 interest with respect to such series. Except as otherwise provided in an
26 operating agreement, any event under this chapter or an operating
27 agreement that causes a member to cease to be associated with a series
28 shall not, in itself, cause such member to cease to be associated with any
29 other series or terminate the continued membership of a member in the
30 limited liability company or cause the termination of the series, regardless
31 of whether such member was the last remaining member associated with
32 such series.

33 (k) Subject to K.S.A. 17-76,116, and amendments thereto, except to
34 the extent otherwise provided in an operating agreement, a series may be
35 terminated and its affairs wound up without causing the dissolution of the
36 limited liability company. The termination of a series established in
37 accordance with subsection (b) shall not affect the limitation on liabilities
38 of such series provided by subsection (b). A series is terminated and its
39 affairs shall be wound up upon the dissolution of the limited liability
40 company under K.S.A. 17-76,116, and amendments thereto, or otherwise
41 upon the first to occur of the following:

- 42 (1) At the time specified in an operating agreement;
- 43 (2) upon the happening of events specified in an operating

1 agreement;

2 (3) unless otherwise provided in the operating agreement, upon the
3 affirmative vote or written consent of the members of the limited liability
4 company associated with such series or, if there is more than one class or
5 group of members associated with such series, then by each class or
6 group of members associated with such series, in either case, by members
7 associated with such series who own more than two-thirds of the then-
8 current percentage or other interest in the profits of the series of the
9 limited liability company owned by all of the members associated with
10 such series or by the members in each class or group of such series, as
11 appropriate; or

12 (4) the termination of such series under subsection (m).

13 (l) Notwithstanding K.S.A. 17-76,118, and amendments thereto,
14 unless otherwise provided in the operating agreement, a manager
15 associated with a series who has not wrongfully terminated the series or,
16 if none, the members associated with the series or a person approved by
17 the members associated with the series or, if there is more than one class
18 or group of members associated with the series, then by each class or
19 group of members associated with the series, in either case, by members
20 who own more than 50% of the then current percentage or other interest
21 in the profits of the series owned by all of the members associated with
22 the series or by the members in each class or group associated with the
23 series, as appropriate, may wind up the affairs of the series; but, if the
24 series has been established in accordance with subsection (b), the district
25 court, upon cause shown, may wind up the affairs of the series upon
26 application of any member associated with the series, the member's
27 personal representative or assignee, and in connection therewith, may
28 appoint a liquidating trustee. The persons winding up the affairs of a
29 series may, in the name of the limited liability company and for and on
30 behalf of the limited liability company and such series, take all actions
31 with respect to the series as are permitted under K.S.A. 17-76,118, and
32 amendments thereto. The persons winding up the affairs of a series shall
33 provide for the claims and obligations of the series and distribute the
34 assets of the series as provided in K.S.A. 17-76,119, and amendments
35 thereto, which section shall apply to the winding up and distribution of
36 assets of a series. Actions taken in accordance with this subsection shall
37 not affect the liability of members and shall not impose liability on a
38 liquidating trustee.

39 (m) On application by or for a member or manager associated with a
40 series established in accordance with subsection (b), the district court
41 may decree termination of such series whenever it is not reasonably
42 practicable to carry on the business of the series in conformity with an
43 operating agreement.

1 (n) If a foreign limited liability company that is registering to do
2 business in the state of Kansas in accordance with K.S.A. 17-76,121, and
3 amendments thereto, is governed by an operating agreement that
4 establishes or provides for the establishment of designated series of
5 members, managers, limited liability company interests or assets having
6 separate rights, powers or duties with respect to specified property or
7 obligations of the foreign limited liability company or profits and losses
8 associated with specified property or obligations, that fact shall be so
9 stated on the application for registration as a foreign limited liability
10 company. In addition, the foreign limited liability company shall state on
11 such application whether the debts, liabilities and obligations incurred,
12 contracted for or otherwise existing with respect to a particular series, if
13 any, shall be enforceable against the assets of such series only, and not
14 against the assets of the foreign limited liability company generally or
15 any other series thereof, and whether any of the debts, liabilities,
16 obligations and expenses incurred, contracted for or otherwise existing
17 with respect to the foreign limited liability company generally or any
18 other series thereof shall be enforceable against the assets of such series.

19 Sec. 2. K.S.A. 17-7663 is hereby amended to read as follows: 17-
20 7663. As used in this act unless the context otherwise requires:

21 (a) "Articles of organization" means the articles of organization
22 referred to in K.S.A. 17-7673, and amendments thereto, and the articles
23 as amended.

24 (b) "Bankruptcy" means an event that causes a person to cease to be
25 a member as provided in K.S.A. 17-7689, and amendments thereto.

26 (c) "Contribution" means any cash, property, services rendered or a
27 promissory note or other obligation to contribute cash or property or to
28 perform services, which a person contributes to a limited liability
29 company in such person's capacity as a member.

30 (d) "Foreign limited liability company" means a limited liability
31 company formed under the laws of any state or under the laws of any
32 foreign country or other foreign jurisdiction and denominated as such
33 under the laws of such state or foreign country or other foreign
34 jurisdiction.

35 (e) "Knowledge" means a person's actual knowledge of a fact, rather
36 than the person's constructive knowledge of the fact.

37 (f) "Limited liability company" and "domestic limited liability
38 company" means a limited liability company formed under the laws of
39 the state of Kansas and having one or more members.

40 (g) "Operating agreement" means any agreement, written or oral, of
41 the member or members as to the affairs of a limited liability company
42 and the conduct of its business. A written operating agreement or another
43 written agreement or writing:

1 (1) May provide that a person shall be admitted as a member of a
2 limited liability company, or shall become an assignee of a limited
3 liability company interest or other rights or powers of a member to the
4 extent assigned, and shall become bound by the operating agreement:

5 (A) If such person (or a representative authorized by such person
6 orally, in writing or by other action such as payment for a limited liability
7 company interest) executes the operating agreement or any other writing
8 evidencing the intent of such person to become a member or assignee; or

9 (B) without such execution, if such person (or a representative
10 authorized by such person orally, in writing or by other action such as
11 payment for a limited liability company interest) complies with the
12 conditions for becoming a member or assignee as set forth in the
13 operating agreement or any other writing and requests (orally, in writing
14 or by other action such as payment for a limited liability company
15 interest) that the records of the limited liability company reflect such
16 admission or assignment; and

17 (2) shall not be unenforceable by reason of its not having been
18 signed by a person being admitted as a member or becoming an assignee
19 as provided in subparagraph (a) of this paragraph, or by reason of its
20 having been signed by a representative as provided in this act.

21 (h) "Limited liability company interest" means a member's share of
22 the profits and losses of a limited liability company and a member's right
23 to receive distributions of the limited liability company's assets.

24 (i) "Liquidating trustee" means a person carrying out the winding up
25 of a limited liability company.

26 (j) "Majority in interest" means the affirmative vote or consent of the
27 members who own more than 50% of the then current percentage or other
28 interest in the profits of the limited liability company owned by all
29 members entitled to vote thereon or the members in each class or group
30 entitled to vote thereon as appropriate.

31 (k) "Manager" means a person who is named as a manager of a
32 limited liability company in, or designated as a manager of, a limited
33 liability company pursuant to an operating agreement or similar
34 instrument under which the limited liability company is formed.

35 (l) "Member" means a person who has been admitted to a limited
36 liability company as a member as provided in K.S.A. 17-7686, and
37 amendments thereto, or, in the case of a foreign limited liability company,
38 in accordance with the laws of the state or foreign country or other
39 foreign jurisdiction under which the foreign limited liability company is
40 organized.

41 (m) "Person" means a natural person, partnership (whether general
42 or limited and whether domestic or foreign), limited liability company,
43 foreign limited liability company, trust, estate, association, corporation,

1 custodian, nominee or any other individual or entity, *or series thereof*, in
2 its own or any representative capacity.

3 (n) "Personal representative" means, as to a natural person, the
4 executor, administrator, guardian, conservator or other legal
5 representative thereof and, as to a person other than a natural person, the
6 legal representative or successor thereof.

7 (o) "State" means the District of Columbia or the commonwealth of
8 Puerto Rico or any state, territory, possession or other jurisdiction of the
9 United States other than the state of Kansas.

10 Sec. 3. K.S.A. 17-7682 is hereby amended to read as follows: 17-
11 7682. An operating agreement or an agreement of merger or
12 consolidation may provide that contractual appraisal rights with respect to
13 a limited liability company interest or another interest in a limited
14 liability company shall be available for *any class, group or series of*
15 members or limited liability company interests in connection with any
16 amendment of the operating agreement, any merger or consolidation in
17 which the limited liability company is a constituent party to the merger or
18 consolidation, or the sale of all or substantially all of the limited liability
19 company's assets. The district court shall have jurisdiction to hear and
20 determine any matter relating to any such appraisal rights.

21 Sec. 4. K.S.A. 17-7663 and 17-7682 are hereby repealed.

22 Sec. 5. This act shall take effect and be in force from and after its
23 publication in the statute book.